COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1538 of 2001

U.P. State Road Transport Corporation
… **Appellant.**

Versus

Smt. Jasvinder Kaur and others **…** **Respondents.**

Mr. A.N. Sharma, learned counsel for the appellant.
Mr. B.P. Nautiyal, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 03, 2004

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and Award, dated 25.07.2001 passed in M.A.C. Petition No. 162 of 1995, by Motor Accident Claims Tribunal/Addl. District Judge, V Fast Track Court, Dehradun **(*in short the Tribunal*),** whereby the learned Tribunal has awarded Rs. 4,17,500/- along with interest @9% per annum in favour the claimants and against the O.P.No.2-the appellant.

Brief facts, giving rise to the present appeal, are that on 8.7.1995, S. Jaswinder Singh was coming back from Hemkund Sahib by Jeep No. PB 06 A-0339 along with S. Balvinder Singh, S.Suchha Singh, S. Lehmabar Singh, Smt. Jaswant Kaur, Smt. Surjeet Kaur and Km. Harinder Kaur and were proceeding towards Ponta Sabhi on way back to Ropar. When they reached near village Dhookot, Chakrata Road, few kilometers before Sahaspur (Dehradun), a bus No. U.P. 07-0137 belonging to U.P.S.R.T.C., which was coming from the opposite direction and was being driven rashly and negligently by its driver, hit the aforesaid Jeep

resulting in an accident causing death of Km. Harinder Kaur, Smt. Jaswant Kaur, S. Suchha Singh, S. Lehbbar Singh, S. Jaswinder Singh, S. Balllvinder Singh and Smt. Surjeet Kaur. Consequently, Smt. Jaswinder Kaur, Master Parminder, Arasdip Singh, etc., the claimants preferred petition under Section 166 of the Motor Vehicles Act ***(in short the Act)*** claiming Rs. 21,00,000/- by way of compensation for the death of deceased S. Jaswinder Singh, who died in the alleged motor accident. As mentioned earlier, the claim petition was registered as Motor Accident Claim Petition No. 162 of 1995.

Opposite Party No.2, the appellant, contested the petition by filing its written statement on the ground that the said Jeep was not hit by the bus; but the bus was hit by the Jeep. The appellant O.P.No.2 denied that the bus was not being driving rashly and negligently and that it was being driven at high speed, rather the jeep in question was being driving rashly and negligently by its driver. It was also stated that on 8-7-95, the bus No. UP 07E-0137 was being driven by Raj Kumar Agarwal from Ponta Sahib to Dehradun. When it reached Sahaspur, the driver was feeling unwell, therefore, considering the inconvenience that may be caused to the passengers, Sri Shrawan Kumar, driver who was available there, was requested to drive the bus from there to its destination, Dehradun. The said driver agreed to drive the bus and he was driving the vehicle in normal speed. However, the bus took some passengers from village Selakhi and from that village, the bus had to go upward at the place known as ‘Farm’ near Dhoolkot village. Then suddenly, the Jeep bearing no. PB 06A/0339 appeared coming from the opposite direction in a very fast speed. It was being driven rashly and negligently by its driver on the downward slope. It was also pleaded that at that time it was raining and seeing the bus, the driver of the jeep lost control. The bus driver swerved the bus to extreme left side and its front wheel also went into Kuchha drain (muddy portion of the road) on the left

side; but the vehicle could not be saved and the Jeep driver collided with the bus on its right front and it was turned back after collision. The main ground taken by the answering O.P. was that the said accident in question took place due to rash and negligent driving on the part of jeep driver and not account of rash and negligent driving by the bus driver, hence the appellant was not at all responsible for the accident. It was further pleaded that the amount of compensation was highly excessive, exorbitant and without basis and the claimants were not entitled to any compensation whatsoever as the bus was neither driven rashly and negligently nor in high speed and lastly it was stated even if the claimants were entitled to the compensation, if any, the responsibility rests on the owner and the Insurance Company of the Jeep in question.

The O.P. No.2-A, Sri Raj Kumar Agarwal has also contested the claim by filing written statement and has taken similar stand and pleaded by the appellant-Opposite Party No.2.

The O.P. No.3, New India Assurance Company (Respondent No.7) also filed written statement and it has been pleaded on behalf of the Insurance Company that the claim petition was not legally maintainable against it. It was further pleaded that the total sitting capacity of the Jeep was for six persons, while at the time of accident, as many as 12 persons were travelling in the Jeep and the Jeep driver was not holding a valid driving licence. As the vehicle was over-loaded at the time of accident and the Jeep driver was not holding a valid licence, hence the answering Opposite Party-respondent no.7 was not liable to pay any compensation, as the insured had violated the terms and conditions of the Policy and there was no negligence on the part of the driver of the Jeep. Plea of mis-joinder of necessary party was also raised by the Opposite Party No.3.

Learned Tribunal, after examining the pleading of the parties, framed the following Issues:-

1. ***Whether the accident in question took place due to rash and negligent driving of Bus No. UP 07E-0137 by its driver causing death of S. Jaswinder Singh?***
2. ***Whether the accident in question took place due to rash and negligent driving of jeep No. PB-06A-0339 by its driver?***
3. ***Whether the petition is bad for non-joinder of the drivers of the Bus and the Jeep?***

4. ***Whether the driver of the Jeep was not holding a valid driving licence for driving the Jeep?***
5. ***To what amount of compensation, the petitioners are entitled and from which of the O.Ps.?***

On behalf of the claimants, Smt. Jaswinder Kaur was examined as P.W. 1, while on behalf of the Opposite Parties O.P.W.1 Raj Kumar Agarwal and O.P.W. 2 Sharvan Kumar were produced before the learned Tribunal. Documentary evidence has also been filed by both the parties.

The learned Tribunal, after hearing both the parties and having gone through the record, took Issue Nos. 1 and 2 together for decision. The main point for consideration before the learned Tribunal on these Issues was whether the accident in question took place due to rash and negligent driving of the bus driver or that of the jeep driver. On the basis of the F.I.R. lodged on the date of accident, i.e. 8-7-1995 and the post mortem report in respect of death of S. Jaswinder Singh, etc. coupled with the statement of Claimants' witness Jaswinder Kaur, the learned Tribunal was of the view that the alleged accident was the result of the rash and negligent driving of bus driver. The learned Tribunal also observed that the evidence of Sri Sharvan Kumar was not convincing as he had not even informed his Department about the accident having taken place nor he could disclose the reason therefore. This witness even could not muster courage to lodge an

F.I.R. of the accident at the police station against the alleged offending Jeep driver. Taking into consideration all the facts and circumstances, the learned Tribunal found the evidence of the petitioners trustworthy and it has held on Issue Nos. 1 and 2 that the accident in question was the result of negligence on the part of the bus driver. Learned Tribunal also took up Issue Nos. 3 for decision as preliminary issues and the same was disposed of vide order dated 11.12.1996, holding that the driver of the bus in question was a necessary party and consequently, driver of the bus in question, Raj Kumar Agarwal, was impleaded as O.P. No. 2A. The learned Tribunal also took up Issue No. 4 for decision and considering the fact that since no evidence was led by the Insurance Company to the contrary and valid driving licence of the driver of the Jeep being on record, coupled with the findings recorded on Issue Nos. 1 and 2, the learned Tribunal held that no liability could be fastened on the New India Assurance Company, O.P. No.3-respondent no.7, the insurer of the Jeep in question. On Issue No. 5 (though inadvertently mentioned as Issue No. 7 by the learned lower Court), the learned Tribunal came to the conclusion that on the date of accident, the deceased was 33 years of age. The Tribunal on the basis of the deposition of witness Smt. Jaswinder Kaur, widow of the deceased, wherein she has stated on oath that her husband was serving in Factory and earning Rs.2600/- per month supported by the salary certificate of the deceased issued by his employer coupled with the relevant papers of agriculture on record, came to conclusion that the annual income of the deceased can be safely assessed at Rs. 3,000 x 12 = Rs. 36,000/- and after deducting 1/3rd of the amount towards personal expenses of the deceased, fixed annual loss to be Rs. 24,000/- per annum. Ultimately, applying the multiplier of 17 as per Schedule of the Motor Vehicles Act, learned Tribunal has awarded compensation worth Rs. 4,17,500/- along with interest @ 9% per annum to the claimants and as against the O.P.No.2-the appellant.

The appellant has assailed the impugned judgment *firstly* on the ground that the accident in question was the result of negligence of the Jeep driver, and not the negligence of the driver of the bus in question and *secondly,* that the compensation awarded by the learned Tribunal in excessive and not based on the evidence on record.

We have gone though the entire material available on record including the impugned judgment and Award. From the perusal of the record, it is clear that the accident in question resulting in the death of the deceased was the result of the rash and negligent driving by the driver of the bus. As already mentioned earlier, the driver of the bus at the time of accident, Sri Sharvan Kumar, or Raj Kumar Agarwal, who had appeared as witnesses for the opposite parties never tried to lodged the First Information Report against the Jeep driver. Moreover, said Sharvan Kumar had not even informed his own Department about the accident having been occurred with his bus, therefore, we do not find any reason to take a different view that the accident in question was the result of negligence of Jeep driver. Learned Tribunal has already discussed the matter elaborately in its judgment. We are in agreement with the conclusion arrived at by the leaned Tribunal. For the discussion above, we are not inclined to accept the first contention of the appellant.

As regards the second contention raised on behalf of the appellant before us that the amount of compensation awarded by the Tribunal was excessive and it was argued before us that the multiplier of fifteen applied by the learned Tribunal was improper. Considerring the entire before us, it is clear that the deceased was an employee of a factory he was earning Rs. 2,600/- p.m. from his employment, besides income from agriculture, etc., as deposed to by the claimants' witness before the learned Tribunal. It appears that the opposite parties before the learned Tribunal have neither challenged the factum of income of the deceased specifically in

their pleadings nor by way of cross-examination of claimants before the Tribunal. The deceased was 33 years of age at the time of his death. As mentioned earlier, the learned Tribunal has worked out annual loss of income to be 24,000/-, which in our view is based on the evidence on record. The appropriate multiplier in the instant case is of 17, as per Schedule of the Motor Vehicles Act. The impugned Award of compensation worth Rs. 4,17,500/-(four lacs seventeen thousand five hundred) has been correctly worked out taking into consideration the entire evidence before the learned Tribunal and in accordance with the Schedule under the Motor Vehicles Act, 1988. We are in full agreement with the conclusion arrived at by the learned Tribunal, therefore, the second contention of the appellant is also not acceptable.

In our opinion, there is nothing on record so as to warrant any interference in the judgment and award under appeal. We find no merit in the appeal, which deserves to be dismissed.

In the result, the appeal is dismissed. The judgment and Award under appeal is upheld. No order as to costs.

The amount deposited in this court shall be transmitted to the Motor Accident Claims Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP